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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,710

09/08/2006

Gerd Ritzdorf

512100-2059

9192

20999 7590 12/30/2010  
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EXAMINER

LEWIS, KIM M

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

12/30/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/598,710	<b>Applicant(s)</b> RITZDORF ET AL.	
	<b>Examiner</b> Kim M. Lewis	<b>Art Unit</b> 3772	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33,36-38 and 40-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33,36-38,40-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 9/16/10 has been received and made of record. As requested, the specification and claim 33 has been amended.
2. Claims 33, 36-38 and 40-53 are pending in the instant application.

### ***Response to Arguments***

3. Applicant's arguments filed 9/16/10 have been fully considered but they are not persuasive. It is argued that the combination of Schafer, Fabo and Lindqvist differ from the applicants' claims in that none of the references suggest areas of elasticity and non-elasticity in the bandage. The examiner disagrees. It should be noted that the areas in Schafer et al. which comprise the cotton threads constitute non-elastic areas (col. 1, lines 47-58).

It is also argued that the interpretation that Schafer et al. somehow reads on or is related to applicants' claimed bandage because the bandage of Schafer can be torn into smaller elements is misplaced. The examiner disagrees. Any length of the bandage, whole or part, of Schafer is a segment. Furthermore, the length of the bandage can be torn into smaller segments.

Also argued is that any modification of the reference teaching cannot render the respective teaching either inoperable or unsuitable for its intended user. The examiner agrees and contends that the modification of Schafer et al. in no way renders it

Art Unit: 3772

inoperable. As to the intended use of supporting a joint, nothing in Schafer precludes its use in such a manner. Furthermore, nothing in Fabo or Lindqvist precludes use in the support of a joint.

In response to Applicants argument's that the reliance on *In re Aller* is misplaced, and that a particular parameter must first be recognized as a result-effective variable. Applicant's should note that the prior art reference of Schafer discloses a bandage that is **highly elastic**. The examiner equates highly elastic to at least substantially elastic. Thus, the elasticity of the bandage is at the very least 50%. Additionally, Schafer teaches at col. 2, lines 39-47, that depending upon the indication, elasticity and compressibility of the bandage can be adjusted through the thickness of the elastic elements. Thus, elasticity was a recognized variable that could be optimized through experimentation with the thickness of the elastic elements.

In response to Applicant's argument regarding the generic reliance on *Ex parte Smith* (citing KSR) being overbroad. The examiner disagrees. Applicants contend that a skilled artisan would be confronted with an infinite array of possibilities and would not reasonably arrive at the instant invention without Applicants' claims before them, the examiner disagrees. First and foremost, there are not an infinite array of possibilities when combining Schafer and Fabo and/or Lindqvist. Fabo and Lindqvist are cited for teaching dressings (i.e., support device) that have a low adhesion forces that either touches or lies within Applicants' claimed range. Furthermore, both Fabo and Lindqvist teach the use of a silicone gel adhesive. Thus, Applicants' assertion of an infinite array

Art Unit: 3772

of possibilities is not accounted for with the choices being a silicone gel adhesive with an adhesion force in the range of 0.1 to 2 (Lindqvist) or 0.2 to 10 N/ 50 mm (Fabo).

In response to applicant's argument with respect to how the adhesive is applied, it is inherent that the adhesive is coated on one side of the bandage of Schafer either completely or partially.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

Art Unit: 3772

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 33, 36-38 and 40-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,424,808 ("Schafer et al.") in view of U.S. Patent No. 5,540,922 ("Fabo") and/or U.S. Patent No. 6,051,747 ("Lindqvist et al.").

As regards claims 33 and 35-38 and 40, Schafer et al. discloses a wide rectangular elastic bandage fabric that substantially discloses applicants' invention. More specifically, Schafer et al. discloses an elastic fabric bandage which is adhesively or self-adhesively coatable one side (col. 7, line 66-col. 8, line 4). Applicants should note that the bandage is either wholly coated or partially coated on one side. The bandage is highly longitudinally elastic in the warp or weft directions (*i.e.*, in the transverse or longitudinal directions), thereby being unidirectionally elastic. Applicants should note that the bandage fabric itself is a segment and is tearable into further segments, and that the **"highly longitudinally elastic"** property inherently equates to at least 50% elasticity. It should also be noted that the cotton, staple fibre, or cotton/staple fiber provide in either the weft or warp direction (col. 1, lines 55-56) provide non-elastic areas in the bandage.

Assuming *arguendo* that applicant contends that the highly longitudinally elastic fabric does not inherently possess an elasticity of between 20% to 150%, the examiner contends that it would have been obvious to one having ordinary skill in the art to modify the elasticity bandage of Schafer et al. to attain an elasticity between 20% to 150%

Art Unit: 3772

depending upon the indication as recited in col. 2, lines 39-47. Applicant should also note that it has been held that “[w]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, depending upon the indication, it would have been further obvious to one having ordinary skill in the art to discover the optimum or workable ranges of elasticity by routine experimentation.

Schafer et al. fails to teach that the adhesive or coadhesive layer has an adhesion force of 1-10.0 N and a releasable protective layer. However, both Fabo and Lindqvist et al. disclose an absorbent wound dressing having a silicone gel adhesive layer that has an adhesion force that either touches or lies within applicant's claimed range (note the range of 0.1 to 2 N at col. 1, lines 61-63 of Lindqvist et al. and the range of 0.2 to 10 N/50 mm at col.3, lines 43-47 of Fabo). Fabo also discloses at col. 2, lines 48-51, that protective strips may be added and then removed from the adhesive surface.

Thus, it would have been obvious to one having ordinary skill in the art to substitute the adhesive of Schafer et al. for the adhesive in Fabo or Lindqvist et al. in order to provide a device with a low adhesion force that is gentle on the skin when removed, and further obvious to add protective strips to the device of Schafer et al. in order to protect the adhesive prior to use as is done in Fabo.

Applicant is reminded that it has been held that where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for

Art Unit: 3772

another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly, Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S. Ct. at 1740, 82 USPQ2d at 1396. Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

As regards claim 52, the modified device of Schafer et al. as discussed above in the rejection of claim 33 above substantially discloses all features of the claimed method. The modified device does not explicitly recite that the protective film strips are silicone treated. However, silicone treatment of release sheets is commonly known in the art. Thus, it would have been *prima facie* obvious to one having ordinary skill in the art to employ silicone treated protective strips as an obvious design choice.



Art Unit: 3772

Furthermore, Schafer et al. fails to teach punching bandage segments. However, it is also commonly known that during the manufacturing of bandages, that bandage rolls or strips are cut or punched from larger rolls. Thus, it would have been *prima facie* obvious to one having ordinary skill in the art to punch/cut the modified bandage of Schafer et al. in order to provide bandage in the desired size.

As regards claims 42 and 43, Schafer discloses the fabric (backing layer) is constructed from non-biodegradable material such as rubber.

Re. claims 44 and 45, the fabric is woven and is therefore breathable due to the spaces between the weft and warp threads.

As regards claims 46 and 47, Schafer et al. discloses that the fabric may be constructed from covered rubber threads and that covering may take place with cotton, staple fibre, polyfilic textured polyamide or other textured synthetic fibers (col. 1, line 67-col. 2, line 19). Absent a critical teaching and/or a showing of unexpected results derived from the use of polyethylene, polypropylene or polyester material as a polymer chosen in the construction of the backing material, the examiner contends that it would have been within the level of ordinary skill in the art to choose a well known synthetic polymer such as polyethylene, polypropylene, polyester or polyalkylene terphthalates as the material for the covering since the type of material used does not patentably distinguish applicant's invention.

As regards claims 48-51 and 53, the modified device of Schafer et al. fails to teach the unidirectionally elastic adhesive bandage as claimed in claim 45, characterized in that the porosity of the film is in the range of 10 to 50%, the

Art Unit: 3772

unidirectionally elastic adhesive bandage as claimed in claim 45, characterized in that the backing layer has a warp number in the range of 300-350, and a weft number in the range of 100-140, the unidirectionally elastic adhesive bandage as claimed in claim 49, characterized in that the backing layer has a warp number in the range of 310-330 and a weft number in the range of 120-130, and the unidirectionally elastic adhesive bandage as claimed in claim 33, characterized in that the bandage segment is rectangular with a side ratio of length to width of 1.2:1 to 1.8:1. The examiner contends that the claimed features are not novel and that it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, it would have been obvious to one having ordinary skill in the art, through routine experimentation, to determine the optimum or workable ranges of the porosity, weft and warp numbers and the side ratio of length to width.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3772

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Wednesday, from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kim M. Lewis/  
Primary Examiner  
Art Unit 3772

Application/Control Number: 10/598,710  
Art Unit: 3772

Page 11

Kml  
November 20, 2010